IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1693 OF 2005

Shri Ashok Dadu Mangale .. Petitioner

Vs.

Shri A.N. Roy and Ors. .. Respondents

Mr. U.N. Tripathi for Petitioner.
Ms. A.S. Pai, APP for Respondents-State.

CORAM : B. H. MARLAPALLE &
SMT. R.S. DALVI,JJ.

Reserved on : February 27, 2006.

Date of pronouncement : March 02, 2006.

JUDGMENT: (PER B.H. MARLAPALLE,J.):

1. This petition filed under Article 226 read with Articles 14, 19, 21 and 22 of the Constitution brings in question the order of detention dated 3/3/2005 passed by the Commissioner of Police, Brihan Mumbai under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (the Act for short). The said order has been claimed to have been passed with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order and to further arrest his activities of a "slumlord" as defined in Section 2(f) of the Act.

2. The petitioner is a resident of Mumbai and at the relevant time was residing at Trimurti Seva Sangh, Maharashtra Nagar, Mankhurd, a suburb of Mumbai along with his family members. Initially L.A.C. No.15/2005 came to be registered against the petitioner and 17 others for an offence punishable under Section 3 Z - 2(6) of the Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971 on 2/1/2005 on the complaint filed by Shri Sunil Kashinath Bhutale who was at the relevant time working as Nayab Tahsildar, Encroachment and Demolition Department, Chembur, Mumbai. The Deputy Collector, Chembur by his order dated 2/1/2005 had ordered the complainant to take penal action against the persons who had constructed the illegal huts by encroachment on the land of Survey No.80 in the area of Vanikaran (Maharashtra Nagar), Mankhurd. In the course of investigation the officers concerned, including the Deputy Collector, visited the place of offence and statements of four witnesses were recorded. A map of the said land in Survey No.80 was made available to the Senior Inspector of Police, Police Station at Trombay along with 7 x 12 extracts and it was noted that the land belongs to the State Government. The complainant undertook a demolition drive and arrested all the 18 accused on 2/1/2005. They were produced for remand before the learned Metropolitan Magistrate,

42nd Court, Shinde Wadi, Dadar on 3/1/2005. The petitioner applied for bail and was directed to be released on bail by furnishing personal bond and surety of Rs.1500/-. Accordingly the petitioner availed the bail facility on 3/1/2005 and became a free man. Subsequently confidential inquiries were made regarding the criminal activities of the petitioner and his associates and in-camera statements of four witnesses were recorded from 4/1/2005 to 10/1/2005. The Sponsoring Authority, namely, the Senior Inspector of Trombay Police Station submitted a proposal on 18/1/2005 for the detention of the petitioner under the Act to the Detaining Authority i.e. the Commissioner of Police, Brihan Mumbai and the impugned order was passed on 3/3/2005. The petitioner was served with the order of detention and was taken in custody on 5/3/2005. It was approved by the State Government on 10/3/2005 under Section 3(3) of the Act. Reference under Section 10 of the Act was made to the Advisory Board on 21/3/2005 and the Advisory Board recorded its opinion on 12/4/2005 which was received by the State Government on 13/4/2005. It was placed before the State Government on 16/4/2005 and the State Government passed the confirmation order on the same day.

3. The detention order has been challenged on the

following grounds:-

(A) There was no material before the Detaining Authority to come to the conclusion that the petitioner is a slumlord within the meaning of Section 2(f) of the Act and the impugned order does not fulfil the requirements of law as defined in Section 2(b-1) of the Act.

(B) The grounds of detention, served along with the impugned detention order, suffer from non application of mind of the Detaining Authority as much as the said Authority was not sure whether the activities of the petitioner and his associates were causing or calculated to cause harm, alarm and danger to the lives and properties of the residents and the business community in the area of Mankhurd.

(C) Some of the documents served on the petitioner along with the detention order were partly and/or wholly illegible (page nos.75, 95, 96, 99, 113 to 121 and 129 to 141) and as a result thereof the petitioner's right to make an effective representation was jeopardise. Failure to provide the legible copies of the documents amounted to non communication of the grounds of detention and, therefore, the order is bad

in law and void ab initio.

(D) The detention order suffers from gross delay in as much as the LAC No.15 of 2005 was registered on 2/1/2005, in-camera statements were recorded from 4/1/2005 to 10/1/2005 but the impugned order came to be passed only on 3/3/2005.

(E) The order passed by the Deputy Collector, Chembur on 2/1/2005 referred to in para 5(a)(i) of the grounds of detention was not furnished to the petitioner and thereby the detention order is vitiated. Similarly, a true and correct translation of the bail order was not provided to the petitioner in the language known to him i.e. the bail order has not been translated in Marathi and supplied to the petitioner along with the impugned order and on this ground also the detention order is vitiated.

(F) In the Marathi version of the grounds of detention the petitioner's right to make representation to the Detaining Authority has not been set out and thus there is a failure to communicate regarding the petitioner's right to make a representation whereas in the English version a right has been expressly communicated to the petitioner. The petitioner does not understand English and he read

only Marathi version of the grounds of detention and, therefore, he has been deprived from making an effective representation. On this ground also the detention order is illegal and bad in law.

(G) The representation was submitted by the petitioner on 28/6/2005 but it was not decided expeditiously and the rejection of the representation was communicated to the petitioner on 13/7/2005. The delay caused in deciding his representation has violated the guarantee under Article 22(5). In addition, the copies of the documents necessary to submit the representation were not supplied to the petitioner and on that count also the impugned order of detention is illegal.

4. The learned counsel for the petitioner in support of his challenge to the detention order on the above mentioned grounds has relied upon the following decisions:-

(a) Jagannath Misra vs. State of Orissa [AIR 1966 SC 114].

(b) Abay Shridhar Ambulkar vs. S.V. Bhave, Commissioner of Police and ors. [(1991) 1 SCC 500].

(c) Powanammal vs. State of Tamil Nadu and anr. [1999 SCC (Cri) 231].

(d) Abdul Sathar Ibrahim Manik vs. Union of India and ors. [1991 Cri.L.J. 3291].

(e) Kamleshkumar Ishwardas Patel vs. Union of India and ors. [JT 1995 (3) S.C. 639].

(f) Sophia Gulam Mohd. Bham vs. State of Maharashtra and ors. [1999 SCC (Cri) 1160], and

(g) V.C. Mohan vs. Union of India and ors. [2002 SCC (Cri) 648].

5. The Detaining Authority has filed affidavit in reply and on behalf of the State Government the Under Secretary, Home Department (Special) has filed the reply. On behalf of the Sponsoring Authority, the Assistant Police Inspector, Trombay Police Station has filed an affidavit. The said officer has also filed an affidavit confirming that he recorded the in-camera statements of witnesses A to D from 4/1/2005 to 10/1/2005. The Assistant Commissioner of Police,

Trombay Division has also filed an affidavit affirming that during the period from 7/1/2005 to 11/1/2005 the four witnesses (A to D) had appeared before him and their in-camera statements recorded by the Assistant Police Inspector, Trombay Police Station were placed before him and he verified the said statements individually.

6. A perusal of the grounds of detention in its preamble states that the detention order has been passed on the grounds mentioned in paragraph no.5 and that the detenu is a slumlord as defined in Section 2(f) of the Act. It further states that the petitioner had taken to the life of crime as a slumlord to target vast open land of the Government for acquiring easy money, created a reign of terror in the minds of people in the areas of Maharashtra Nagar, Vanikaran, Patra Chawl, Cheeta Camp and the areas adjoining thereto within the jurisdiction of the Trombay Police Station in Brihan Mumbai and unauthorisedly constructed huts and sold the same to the needy people of the society, by extracting money under the threats on terror. In para 5 there are two separate grounds, namely, ground (a) and ground (b). It is a well settled position in law that if the impugned order is sustainable on any of the two grounds, it has to be upheld by us. So far as the

first ground is concerned, it is solely based on the registration of LAC No.15 of 2005 at the instance of Shri Sunil Kashinath Bhutale, Nayab Tahsildar, attached to Encroachment and Demolition Department at the relevant time. As noted earlier, reliance has also been placed on the statements of four witnesses recorded during the course of investigation in the said LAC. From the original file we have gone through the statements of these four witnesses i.e. Shri Dattatraya Keshav Mehar, Shri Karansingh Ransingh Kuvar, Shri Yuvraj Vasant Chorge and Shri Shankar Kisan Sonawane. Last witness Shri Sonawane is not the resident of the area concerned and he claimed to be a social worker with an affiliation to Shiv Sena. The other three witnesses also did not disclose whether they were the residents of the area concerned i.e. Maharashtra Nagar (Vanikaran). They did not state that any one of them had purchased or had come in possession of a piece of land from Survey No.80 through the petitioner and constructed a hut there. The statement of the complainant recorded on 3/1/2005 clearly stated that on receiving the reports that some persons were encroaching upon the Government land, he visited Survey No.80 and noticed 18 unauthorised huts. He demolished some of them and reported to the higher authority. As per these statements all the 18 persons could be termed as slumlords if regard be had to the

definition of the same term in Section 2(f) of the Act, which reads as under:-

> "2. In this Act, unless the context otherwise requires-
> (a) .....
> (b) .....
> (c) .....
> (d) .....
> (e) .....
>
> (f) "slumlord" means a person, who illegally takes possession of any lands (whether belonging to Government, local authority or any other person) or enters into or creates illegal tenancies or leave and licence agreements or any other agreements in respect of such lands, or who constructs unauthorised structures thereon for sale or hire, or gives such lands to any persons on rental or leave and licence basis for construction, or use and occupation, of unauthorised structures, or who knowingly gives financial aid to any persons for taking illegal possession of such lands, or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation, or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure, or who abets in any manner the doing of any of the abovementioned things;

. To meet the requirements of a slumlord is totally a different aspect from the pendency of a FIR for the offences punishable under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 and if it is claimed that the encroachers of the Government land are slumlords, in the instant case all the 18 accused will fall in the

same category. We, therefore, reject first ground 5(a) in support of the impugned order of detention. Notwithstanding the fact that the Advisory Board has recorded its opinion for sufficient reasons being available for passing the detention order.

7. Coming to the second ground in para 5(b), as noted earlier, four in-camera statements of witnesses A to D have been relied upon. We have perused all of them and the copies of these four statements were also supplied to the petitioner along with the order of detention. They are legible and we do not find any substance in the allegations made by the petitioner that the said copies are not legible. Every statement recorded appears to be reliable and all of these witnesses are the residents of Maharashtra Nagar (Vanikaran area) i.e. Survey No.80 and are residing on the plots handed over to them by the petitioner or his associate Tukaram Bandu Mandavkar. They have in no uncertain words described as to how they came in possession of the open plot and the hut constructed thereon on payment of a fixed amount to the petitioner or his associate Tukaram. All these witnesses have also given instances of extraction of money under the fear of transfer of the hut and the intimidation pointing out deadly weapons. These instances have been reported from October 2004 and November, 2004

onwards. The petitioner was externed in August, 2003 for a period of six months. These witnesses i.e. A to D have described their personal encounters with the petitioner or his associate Tukaram and the instances stated by them during the in-camera inquiry do reveal that the petitioner acted as a slumlord within the meaning of Section 2(f) of the Act.

. Witness "A" stated that the hutment dwellers who purchased the hut from the petitioner and his associate are also required to buy water and electricity from the petitioner and his associate and in addition, during the election, they are required to vote to the candidate as decided by the petitioner and his associate. In case the employees of the Corporation or Revenue Department came in the area for undertaking the surveys, they are threatened by the petitioner and his associates. The witness described the incident that had taken place around 11.30 in the night when Tukaram and the petitioner entered the witness's hut and assaulted him. A demand for additional compensation was made and when the witness stated that he did not have the money he was directed to vacate the hut, his belongings were thrown out of the hut and when people gathered to his rescue, the petitioner displayed his chopper and asked the other residents to go back their places. Witnesses B and C

have also described such separate encounter they faced with the petitioner and his associate Tukaram. We are informed that Tukaram also was taken in detention by the similar order. These statements recorded in-camera have been duly verified by the Assistant Commissioner of Police subsequently and within a reasonable time span. There is no reason to discard these statements of witnesses A to D. We, therefore, record that the impugned order of detention is supported by the reasons set out in para 5(b) of the grounds of detention and there is sufficient material on record to hold that the petitioner came within the definition of the term "slumlord". In this regard the Detaining Authority has rightly relied upon the decision in the case of Phulwari Pathak V/s. R.H. Mendonca reported in **JT 2000(8) SC 209**.

8. On the point of delay in passing the detention order, it has been clarified by the Detaining Authority that the Nayab Tahsildar had undertaken demolition of encroached huts as per the order passed by the Deputy Collector, Chembur on 2/1/2005 and he registered LAC No.15/2005 for the offences under Section 3Z - 2(6) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The petitioner was arrested on the same day and he was

granted bail on the very next day by furnishing a personal bond and surety of Rs.1500/-. In-camera statements were recorded on 4/1/2005, 5/1/2005, 8/1/2005 and 10/1/2005 and verified by the Assistant Commissioner of Police of the concerned division from 7/1/2005 to 11/1/2005. The Sponsoring Authority moved the proposal for detaining the petitioner on 18/1/2005 and it was forwarded to the Deputy Commissioner of Police, Zone-VI who gave his endorsement on 21/1/2005. Next day it was received by the PCB, CID and on 24/1/2005 the Senior Police Inspector of PCB, CID prepared a detailed note and forwarded it to the Deputy Commissioner of Police who endorsed it on 25/1/2005 and forwarded the same to the Additional Commissioner of Police (Crimes). The Additional Commissioner of Police endorsed it on 27/1/2005 and forwarded the papers to the Detaining Authority. The proposal was approved on 15/2/2005. The detenu did not understand English and, therefore, Marathi translated papers were forwarded to the Sponsoring Authority on 16/2/2005. These were checked and verified and certified by the Asstt. Commissioner of Police on 28/2/2005 and forwarded to the PCB, CID on 1/3/2005. The Deputy Commissioner of Police endorsed it on 3/3/2005 and thereafter papers were forwarded to the Detaining Authority on the same day and thus the detention order was passed on 3/3/2005. This time gap

of two months i.e. after the LAC was registered, has been duly explained and the gap between 27/1/2005 and 15/2/2005 could not be fatal to the order of detention, as the link between the activities of the petitioner as a slumlord and their continuation in future was not snapped. In any case, the delay caused in passing the detention order cannot be equated with the delay caused in deciding the representation submitted against the order of detention for deciding the legality and validity of the detention order. In this regard we rely upon the decision of the Supreme Court in the case of Rajendrakumar Natvarlal Shah vs. State of Gujarat and Ors. reported in **AIR 1988 SC 1255**.

9. The petitioner had submitted his representation dated 28/29th June 2005 against the detention order and it was received by the Home Department on 30/6/2005. The representation was submitted by Shri U.N. Tripathi, Advocate on behalf of the petitioner and the relief therein was in two parts, namely, (a) the detention order issued by the Commissioner of Police be revoked and set aside and (b) to furnish the documents and information asked for in various paragraphs of the representation to enable him to make effective representation. The reply filed on behalf of the Secretary to the Government of

Maharashtra (Preventive Detention - Home) to whom the representation was addressed to, it has been stated that parawise remarks were called on 1/7/2005 from the Detaining Authority, they were received on 4/7/2005 late in the evening and were scrutinised by the concerned Assistant on 5/7/2005. The representation was forwarded to the Under Secretary and he endorsed it on 6/7/2005 and forwarded to the Deputy Secretary who, in turn, placed it before the Additional Chief Secretary (Home). The Additional Chief Secretary (Home) as the competent authority passed an order rejecting the representation on 6/7/2005, as per the powers delegated to him under the Business Rules framed under Article 166 of the Constitution (G.R. dated 5/1/2004). A draft letter of rejection was prepared by the concerned Assistant and submitted to the Under Secretary for approval on 7/7/2005. It was sent to the Deputy Secretary on 8/7/2005. On 9/7/2005 and 10/7/2005 the offices were closed and, therefore, on 11/7/2005 the concerned Assistant prepared a fresh draft and put up before the Under Secretary who endorsed the same on 12/7/2005 and forwarded to the Deputy Secretary. Immediately on the next day i.e. on 13/7/2005 written communication was signed, firstly, informing the petitioner that his representation was rejected and secondly, informing him through his Advocate that all the required

documents were enclosed. We are, therefore, satisfied that, firstly, there was no delay in deciding the representation and in communicating the rejection order. The representation received on 30/6/2005 was rejected on 6/7/2005 and the actual communication of the said rejection was dated 13/7/2005. The rejection order was communicated six days later because the representation was in two parts, namely, to revoke the detention order and make available the copies of the documents. This delay is not fatal to the order of detention.

10. It has been contended by the petitioner that the impugned order of detention suffers from non application of mind. This ground is mainly based on the wording used in the preamble in the reasons of detention i.e. "the activities of you and your associate are causing or calculated to cause harm, alarm and danger to the lives and property of the residents and business community in the said areas....."

. The learned counsel for the petitioner submitted that the Detaining Authority himself was not sure whether the activities of the petitioner and his associate had caused harm, alarm and danger to the lives or property of the residents or they were

calculated to cause such harm, alarm and danger to the lives and property of the residents. As noted earlier, the detention order is based on the grounds mentioned in para no.5 of the reasons and the wordings of the preamble set out in paras 2 and 3 therein cannot in any way affect the grounds of detention. In this regard we may usefully refer to the decision of the Supreme Court in the case of Dhananjoy Das vs. District Magistrate and anr. reported in **AIR 1982 SC 1315**, wherein the Supreme Court observed as under:

> ". The grounds of detention read as a whole leave no room for doubt that paragraph 1 of the grounds of detention was only by way of introduction or as a preamble. In substance, it only indicates the modus operandi adopted by the various organisations to the current agitation on foreigners issue in Assam. The 2nd and 3rd paragraphs of the grounds of detention allege a specific part played by the appellant in that agitation. On a perusal of grounds of detention as a whole we are satisfied that the view taken by the High Court that the 1st paragraph of the grounds of detention was only a preamble....."

. The above decision was followed by this court

in the case of Prabhakar Menka Shetty vs. S. Ramamurthy, Commissioner of Police for Gr. Bombay and ors. reported in **1993 Cri. L.J. 1981** and in the case of Najma Hasan Bagwan vs. M.N. Singh reported in **2002 Cri. L.J. 1432**.

11. The so called illegible pages of the documents served on the petitioner along with the detention order have been perused by us and more particularly page nos.75, 95, 96, 99, 113 to 121 and 129 to 141. The documents at page nos. 113 to 122 are 7 x 12 extracts and certified copies of the map. The 7 x 12 extracts are quite legible though the certified copy of the map is little faint but the survey numbers mentioned in the map are legible. Page Nos. 95 and 96 are the case diaries and they were formal documents and additional copies were furnished to the detenu in respect of case diary entry no.4/05. Page No. 75 is a copy of statement of witnesses which is legible. The document at page no.95 is the remand report and a typed copy of the same was also furnished to the detenu which appears at page no.101. The documents at page nos.129 to 141 are the statement of the in-camera witnesses and they are quite legible. The contentions of the petitioner that these documents were illegible and thus he was put to handicap in submitting his representation cannot be accepted if regards be had to

his representation submitted through an Advocate on 28/29th June 2005. We are satisfied that the said representation was effective and exhaustive. In this regard the respondents have rightly relied upon the following two decisions of the Supreme Court:

(a) Kamarunnissa vs. Union of India and anr. [1991 Cri. L.J. 2058].

(b) Veeramani vs. State of Tamil Nadu [1995 Cri. L.J. 2644].

12. The order passed by the Deputy Collector on 2/1/2005 was a direction given to the complainant to take appropriate steps for removal of encroachment on the Government land, including filing of FIR. Non serving a copy of the same order to the detenu has not caused any prejudice to the detenu in terming him a slumlord. As noted, the Detaining Authority has recorded its finding in support of the detention order on the basis of the in-camera statements recorded. Similarly, non furnishing of a copy of the bail order with its Marathi translation to the detenu could not in any way affect the detention order or its legality. It was the petitioner who had applied for bail and it was granted in his favour. It is, therefore, presumed that he was aware about the contents of the order and it was already in his custody impliedly on 3/1/2005 itself. The petitioner also has contended that in the Marathi version of the grounds of detention he was not informed that he could submit a representation by way

of right and though the English version of the same stated so, he could not understand English and the Marathi version has affected his right to submit a representation. This ground of challenge is based on the contents of para 8 of the grounds of detention in Marathi version, which reads as under:-

. The above paragraph in the concluding sentence clearly speaks about the petitioner's right to submit a representation and, therefore, it cannot be accepted that the petitioner was not made aware that by

way of right he can submit a representation against the order of detention. The learned APP rightly relied upon the decision of this court in the case of Anil Dattu Pawar vs. Shri Himansu Roy, Commissioner of Police, Nashik and Ors. reported in **2005 ALL MR (Cri) 2144**, wherein this court in para 8 observed as under :-

> "8.....In the case in hand, apart from the absence of the word "adhikar" (in Marathi), there is sufficient compliance regarding intimation in English as well as in Marathi to the detenu about his entitlement to make representation to the authorities, including the detaining authority and the State Government and that he would be heard, if so desired, by the Advisory Board. Undoubtedly, in the English version the word "right" has been specifically used....."

13. The decision relied upon by the detenu are not applicable in the facts of this case. We are satisfied that his right under Article 22(5) was not violated by the detaining authority or the State Government. As per Section 2(b-1) dangerous person means a person, who either by himself or as a member

or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. Having regards to the in-camera statements of witnesses A to D, the opinion formed by the detaining authority that the detenu had become a gang leader who was habitually committing or attempting to commit the offences under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 by encroaching upon the Government land and by constructing hutments on the same land requires to be accepted. The said statement also goes to show that he was extracting money from the hutment dwellers and by putting them under the threats of terror. He had thus become a dangerous person and a slumlord within the meaning of the Act.

14. Before parting with the case we also deem it appropriate to record that though his representation was rejected by the State Government by its order dated 13/7/2005, this petition was filed on or about 2/7/2005, it was admitted on 7/7/2005 and was made returnable for final hearing after six weeks. Subsequently, the petitioner sought leave to amend the petition and the same was granted by an order dated 26/9/2005. The petitioner applied for amendment of

the petition memo for the second time and the same was granted on 22/12/2005 and that is how the petition remained pending on the file of this court and after amendments were carried out the respondents were required to file additional affidavits and the petition was ultimately heard on 30/1/2006 onwards. The detention order was served on the petitioner on 5/3/2005 and, therefore, the detention period may expire on 4/3/2006 i.e. two days from today. The petitioner has to blame himself.

15. For the reasons set out hereinabove, there is no merit in the challenge raised to the detention order and, therefore, the said challenge must fail. Hence, the petition is dismissed. Rule is discharged.

(Smt.R.S. Dalvi,J.) **(B.H. Marlapalle, J.)**